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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

TRAN A, PHI DIEU N

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 02/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/930,212

Applicant(s)

HOTTA, RYUJI

Examiner

Phi D A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 19-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. Applicant's election with traverse of group I claims 1-18, 24 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that a search of the entire application would not place a serious burden on the Examiner. This is not found persuasive because the subcombination is distinct from the invention claimed, and requires different search.

The requirement is still deemed proper and is therefore made FINAL.

Claims 19-23 are withdrawn from further consideration.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-4, 6, 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 line 3 “that abut the” is indefinite. Should it be “that is adapted to abut”?

Claim 3 line 4 “the central plate” is lacking antecedent basis.

Claim 4 lines 3-4 “the upper...the lower” is lacking antecedent basis.

Claim 6 line 3 “the central” is lacking antecedent basis.

Claim 9 line 4 “that abut the underlayment” is indefinite. Should it be “that is adapted to abut the underlayment”?

Claim 10 line 4 “the central plate” is lacking antecedent basis.

Claim 11 lines 3-4 “the upper...the lower” is lacking antecedent basis.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1, 4, 5, 7, 8, 11, 12, 14, 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Applicant figures 17, 19.

Applicant figures 17 and 19 (prior art) shows a fastening member being disposed over an upper rabbeted horizontal edge (21) of a lower siding board and a lower rabbeted horizontal edge of an upper siding board (2), the fastening member having a base plate (91) portion abutting against rear side surfaces of siding boards (2) that are vertically disposed, a support portion (92) that is provided to erect frontward from the base plate portion, an upper board engaging portion (93) that is bent in an oblique upward direction from the support portion, a lower board engaging portion (94) that is bent in an oblique downward direction from the support portion, the base portion having a nail hole (98 left, figure 17) and a screw hole (98 right, figure 17) through which a nail and a screw being respectively pierced, the nail hole and the screw hole being at the same distance to the support portion, the base plate portion having an upper abutting portion and a lower abutting portion, the fastening member having protruding portions (911, 912) projecting frontward from an upper end of the upper abutting portion and from a lower end of the lower abutting portion, an upper rising portion (911) comprising a sloped portion wherein the nail hole is formed on the sloped portion, an upper abutting portion that is substantially horizontal to the central plate portion (made up of 913 both sides), the fastening member being of a shape that is

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elongated in lateral direction such that a plurality of studs of the framework that is disposed in a laterally aligned manner may be connected and fixed, the lower rising portion having a horizontal plane portion (912) that is arranged to form a substantially right angle with respect to the central plate portion, the siding boards attachment structure being a constructing structure employing a framework wall construction method.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant figures 17-21 in view of Japan (293890).

Applicant figures 17-21 shows all the claimed limitations except for a lower rising portion forming in a frontward rising manner from the lower abutting portion.

Japan (figure 3) shows a lower rising portion (6) forming in a frontward rising manner from the lower abutting portion (8) to enable attaching the fastener to a building frame.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Applicant's figures 17-21 to show a lower rising portion forming in a frontward rising manner from the lower abutting portion because it would enable more attachment of the fastener to a building frame.

5. Claims 3, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant figures 17-20 in view of Helfrecht (DE 3304806).

Applicant figures 17-20 shows all the claimed limitations except for the upper rising portion having a horizontal plane portion that is arranged to form a substantially right angle with respect to the central plate.

Helfrecht shows the upper rising portion (33) having a horizontal plane portion (33) that is arranged to form a substantially right angle with respect to a central plate (34).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Applicant's figures 17-20 to show the upper rising portion having a horizontal plane portion that is arranged to form a substantially right angle with respect to the central plate because the horizontal plane portion would provide a strong support for the rising portion against horizontal force as taught by Helfrecht.

6. Claims 6, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant figures 17-20 in view of Helfrecht (DE 3304806).

Applicant figures 17-20 shows all the claimed limitations except for the lower abutting portion having an abutting surface that is substantially horizontal to the central plate portion.

Japan (figure 3) shows a lower abutting portion having an abutting surface (11) to enable attaching the fastener to a building frame.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Applicant's figures 17-21 to show the lower abutting portion having an abutting surface that is substantially horizontal to the central plate portion because it would enable more attachment of the fastener to a building frame.

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7. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant figures 17-20 in view of Haag et al (2867013)

Applicant figures 17-20 shows all the claimed limitations except for the lower horizontal edge of a lowermost siding board being located to be remote from the round surface, a starter member being fixed to the framework with the lowermost fastening member being disposed at a lowermost end of the siding boards attachment structure, the starter member having a leg plate that is located to be proximate to the ground surface, a bottom abutting against a lower end portion of the fastening member and a back plate to be fixed to the framework, the leg plate being of a length that is substantially identical to a distance between the exterior wall plate mounted to the fastening member and the ground surface.

Haag et al shows a mounting plate (26) having a leg plate (27) that is located proximate to a ground surface, the starter member being fixed to the framework (13) and being disposed at the lowermost end of a siding board attachment structure (15).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Applicant' figures 17-20 to show the lower horizontal edge of a lowermost siding board being located to be remote from the round surface, a starter member being fixed to the framework with the lowermost fastening member being disposed at a lowermost end of the siding boards attachment structure, the starter member having a leg plate that is located to be proximate to the ground surface, a bottom abutting against a lower end portion of the fastening member and a back plate to be fixed to the framework, the leg plate being of a length that is substantially identical to a distance between the exterior wall plate mounted to the fastening member and the ground surface because it is well-known in the art to have the siding board

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lowermost end to be remote from the ground as it would prevent the siding board from rusting and insects, and having a starter member being fixed to the framework with the lowermost fastening member being disposed at a lowermost end of the siding boards attachment structure, the starter member having a leg plate that is located to be proximate to the ground surface, a bottom abutting against a lower end portion of the fastening member and a back plate to be fixed to the framework, the leg plate being of a length that is substantially identical to a distance between the exterior wall plate mounted to the fastening member and the ground surface would enable easy installation and precise starting height of the siding boards.

8. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's figures 17-20 in view of Gabriel (2249125).

Applicant's figures 17-20 shows all the claimed limitations except for an underlayment being interposed between a nail or a screw.

Gabriel shows underlayment being interposed between a nail or screw.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Applicant's figures 17-20 to show an underlayment being interposed between a nail or a screw because it would provide insulation to frame structure.

Applicant's figures 17-20 as modified shows all the claimed limitations. the claimed method steps would have been the obvious method steps of constructing the siding board attachment structure of Applicant's modified figures 17-20.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different siding fasteners.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Phi Dieu Tran A
February 9, 2003

PA

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